

the President's approval or disapproval of the action of the review board, and will perform such administrative acts as may be necessary and thereafter will notify the applicant and/or his counsel of the action taken. Written notice, specifying the action taken and the date thereof, will be transmitted by The Adjutant General to the president of the review board to be filed by the secretary as a part of the records of the board pertaining to each case.

(e) *Rehearings*—(1) *Policy on the granting of rehearings*. After the review board has reviewed a case and its findings and decision have been approved, the case will normally not be reconsidered except on the basis of new, pertinent, and material evidence, which if previously considered could reasonably be expected to have caused findings and a decision other than those rendered as the result of the original review. An application for rehearing must be made within a reasonable time after the discovery of the new evidence, mentioned in this subparagraph, and the request for rehearing must be accompanied by such new evidence and by a showing that the applicant was duly diligent in attempting to secure all available evidence for presentation to the review board when his case was previously reviewed and that the reason for the delay in discovering such new evidence was not due to fault or neglect on the part of the applicant.

(2) *Application for rehearing*. Any officer desiring a rehearing of his case will make a written application therefor on WD AGO Form 0413 (Application for Review of Findings of the Army Disability Review Board) which may be obtained from The Adjutant General, Washington, DC 20310, Attention: AGPO-S-D.

[13 FR 6805, Nov. 19, 1948, as amended at 19 FR 6706, Oct. 19, 1954]

§ 581.2 Army Discharge Review Board.

(a) *Purpose*. This regulation implements 10 U.S.C. 1553, Pub. L. 95-126, and DOD Directive 1332.28 (app. A).

(b) *Explanation of terms*—(1) *Legal consultant of the Army Discharge Review Board (ADRB)*. An officer of The Judge Advocate General's Corps assigned to the ADRB to provide opinions and

guidance on legal matters relating to ADRB functions.

(2) *Medical consultant of the ADRB*. An officer of the Army Medical Corps assigned to the ADRB to provide opinions and guidance on medical matters relating to ADRB functions.

(3) *Video tape hearing*. A hearing conducted by an ADRB hearing examiner at which an applicant is given the opportunity to present his/her appeal to the hearing examiner, with the entire presentation, including cross-examination by the hearing examiner, recorded on video tape. This video tape presentation is later displayed to a full ADRB panel. Video tape hearings will be conducted only with the consent of the applicant and with the concurrence of the President of the ADRB.

(c) *Composition and responsibilities*—(1) *Authority*. The ADRB is established under Pub. L. 95-126 and 10 U.S.C. 1553 and is responsible for the implementation of the Discharge Review Board (DRB) procedures and standards within DA.

(2) *The ADRB president*. The president is designated by the Secretary of the Army (SA). The President—

(i) Is responsible for the operation of the ADRB.

(ii) Prescribes the operating procedures of the ADRB.

(iii) Designates officers to sit on panels.

(iv) Schedules panels to hear discharge review appeals.

(v) Monitors the DOD directed responsibilities of the SA on service discharge review matters for the DOD.

(3) *ADRB panels and members*. The ADRB will have one or more panels. Each panel, when in deliberation, will consist of five officers. The senior officer (or as designated by the president ADRB) will act as the presiding officer.

(4) *Secretary Recorder (SR) Branch*. The Chief, SR—

(i) Ensures the efficient overall operation and support of the ADRB panels.

(ii) Authenticates the case report and directives of cases heard.

(5) *Secretary Recorder*. The SR is an officer assigned to the SR Branch whose duties are to—

(i) Schedule, coordinate, and arrange for panel hearings at a designated site.

(ii) Administer oaths to applicants and witnesses under Article 136 UCMJ.

(iii) Ensure that the proceedings of the cases heard and recorded into the case report and directive of cases.

(6) *Administrative Specialist.* An Administrative Specialist is an enlisted member assigned to the SR Branch whose duties are to—

(i) Assist the SR in arranging panel hearings.

(ii) Operate and maintain video and voice recording equipment.

(iii) Aid the SR in the administrative operations of the panels.

(7) *Administrative personnel.* Such administrative personnel as are required for the proper functions of the ADRB and its panels will be furnished by the SA.

(d) *Special standards.* (1) Under the November 27, 1979, order of the United States District Court for the District of Columbia in “Giles v. Secretary of the Army” (Civil Action No. 77-0904), a former Army service member is entitled to an honorable discharge if a less than honorable discharge was issued to the service member who was discharged before 1 January 1975 as a result of an administrative proceeding in which the Army introduced evidence developed by or as a direct or indirect result of compelled urinalysis testing administered for the purpose of identifying drug abusers (either for the purpose of entry into a treatment program or to monitor progress through rehabilitation or follow up).

(2) Applicants who believe they fall within the scope of paragraph (d)(1) of this section should place the work CATEGORY “G” in block 7, DD Form 293, (Application for Review of Discharge or Dismissal from the Armed Forces of the United States). Such applications will be reviewed expeditiously by a designated official who will either send the individual an honorable discharge certificate if the individual falls within the scope of paragraph (d)(1) of this section or forward the application to the ADRB if the individual does not fall within the scope of paragraph (d)(1) of this section. The action of the designated official will not constitute an action or decision by the ADRB.

[50 FR 33035, Aug. 16, 1985]

§ 581.3 Army Board for Correction of Military Records.

(a) *General*—(1) *Purpose.* This section prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the Army Board for Correction of Military Records (ABCMR).

(2) *Statutory authority.* Title 10 U.S.C. Section 1552, Correction of Military Records: Claims Incident Thereto, is the statutory authority for this regulation.

(b) *Responsibilities*—(1) *The Secretary of the Army.* The Secretary of the Army will oversee the operations of the ABCMR. The Secretary will take final action on applications, as appropriate.

(2) *The ABCMR Director.* The ABCMR Director will manage the ABCMR’s day-to-day operations.

(3) *The chair of an ABCMR panel.* The chair of a given ABCMR panel will preside over the panel, conduct a hearing, maintain order, ensure the applicant receives a full and fair opportunity to be heard, and certify the written record of proceedings in pro forma and formal hearings as being true and correct.

(4) *The ABCMR members.* The ABCMR members will—

(i) Review all applications that are properly before them to determine the existence of error or injustice.

(ii) If persuaded that material error or injustice exists, and that sufficient evidence exists on the record, direct or recommend changes in military records to correct the error or injustice.

(iii) Recommend a hearing when appropriate in the interest of justice.

(iv) Deny applications when the alleged error or injustice is not adequately supported by the evidence, and when a hearing is not deemed proper.

(v) Deny applications when the application is not filed within prescribed time limits and when it is not in the interest of justice to excuse the failure to file in a timely manner.

(5) *The director of an Army records holding agency.* The director of an Army records holding agency will—

(i) Take appropriate action on routine issues that may be administratively corrected under authority inherent in the custodian of the records and that do not require ABCMR action.